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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/380,888 10/27/99 DUPUIS

C 05725.0473

EXAMINER

HM12/1004

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WELLS, L

ART UNIT

PAPER NUMBER

1619

DATE MAILED:

10/04/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/380,888

Applicant(s)

DUPUIS, CHRISTINE

Examiner

Lauren Q Wells

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1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-29, 32-36 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

Claims 18-53 are pending.

***Response to Applicant's Arguments/Amendment***

The Applicant's arguments filed August 31, 2001 (Paper No.10) to the rejection of claims 18-53 made by the Examiner under 35 USC 112 have been fully considered and deemed persuasive. Therefore, the said rejection is hereby withdrawn. The Applicant's arguments to the rejection of claims 18-53 made by the Examiner under 35 USC 103, 102, and the judicially created doctrine of obviousness type double patenting have been fully considered and deemed not persuasive.

***Specification***

The amendment filed April 10, 2000 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: -CO-A-CO-(CH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OH.

The Examiner acknowledges Applicant's arguments regarding this formula, but the Examiner respectfully points out that this formula is not explicitly shown in the priority document, and that since the Examiner is not able to read French, the formula continues to be objected to as added material which is not supported by the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

***102 Rejection Maintained***

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The rejection of claims 18-29, 35, 36 and 39 under 35 U.S.C. 102(e) as being unpatentable over Dupuis et al. (6,031,043) is MAINTAINED for the reasons set forth in the Office Action mailed April 3, 2001, Paper No. 8, and those found below.

Applicant argues that "Dupuis does not teach a topical composition comprising an aqueous gel having rheological properties comprising a difference of C2-C1 is less than or equal to 100 Pa, as presently claimed". This argument is not persuasive, as Dupuis et al. teach a topical composition comprising the same aqueous gel as that of the instant invention. Though, Dupuis et al. does not disclose initial and final viscosities, as the instant invention does, the Examiner respectfully points out that a composition comprising the same constituents must exhibit the same properties. The properties of a composition are the direct result of the inherent properties of the constituents which comprise a composition.

### ***103 Rejection Maintained***

The rejection of claims 18-53 under 35 U.S.C. 103(a) as being unpatentable over O'Neill et al. (4,300,580) in view of Disselbeck et al. (5,804,025) in further view of Adams et al. (WO 95/00105), and Dupuis (5,830,438) is MAINTAINED for the reasons set forth in the Office Action mailed April 3, 2001, Paper No. 8, and those found below.

Applicant argues that "Disselbeck is not related to cosmetic compositions, let alone cosmetic compositions comprising aqueous gels". This argument is not persuasive. While Disselbeck is not directed to cosmetic compositions, the Examiner respectfully points out the Disselbeck was used only to teach the possible mole percents of the 1,4 and 1,3-phenylene groups (aromatic radical substituents) that could be substituted into the polyester. The Examiner contends that one in the hair fixative art would look to Disselbeck because Disselbeck teaches

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the same water dispersible terephthalic copolyester oligomers comprising dicarboxylate repeating units as the instant invention with the same aromatic radical substituent. The Examiner respectfully notes that Disselbeck is not relied upon for its teachings of the terephthalic copolyester, but for its teachings of the percent of the aromatic radical substituents that can be added to the copolyester. The Examiner further points out that O'Neill teaches the same copolyester, but is silent in regards to the mol percent of the aromatic radical substituents added. Disselbeck was used to show that the copolyester of O'Neill could have the same mole percent of the aromatic radical substituent of the instant invention.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

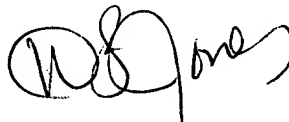
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw  
September 18, 2001



**DAMERON L. JONES**  
**PRIMARY EXAMINER**